



NO. 776

Office-Supreme Court, U.S.  
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IN THE  
**SUPREME COURT**  
OF THE  
**UNITED STATES**

OCTOBER TERM, 1968

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UTAH PUBLIC SERVICE COMMISSION, *Appellant*

v.

EL PASO NATURAL GAS COMPANY, ET AL., *Appellees*

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On Appeal from the United States District Court for the  
District of Utah.

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**PETITION FOR REHEARING**

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NEVADA PUBLIC SERVICE COMMISSION

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The Nevada Public Service Commission (hereafter sometimes referred to as Nevada) prays that this Court grant rehearing of the captioned case, on the grounds below:

I.

Nevada, as the only state which will be served by both the New Company and El Paso Natural Gas Company (El Paso)

after divestiture, has a legitimate concern that both of these companies are treated in a manner consistent with the public interest in divestiture.

## II.

It is the opinion of the Nevada Public Service Commission that this Court's decision will have adverse consequences for the consumer served by both the New Company and El Paso, without any corresponding benefit to competition.

## III.

Nevada respectfully submits that the new standard for the "reallocation" of gas reserves handed down by this Court is uncertain of meaning. But if it is intended to direct El Paso to divest enough domestic reserves to the New Company to support a new project to California, Nevada wishes to point out the probable consequences. Nevada is unaware of any gas reserves in the southwestern United States that are available for this purpose, and therefore any additional gas divested to New Company would be at the expense of El Paso's present customers. Three effects might be expected to flow from such a severance:

A. New Company would simply be collecting higher rates for delivering precisely the same gas.

B. El Paso's rates would inevitably be increased. This would occur because less gas would then be transmitted to the same facilities, resulting in idle capacity and increased unit costs of transmission.

C. El Paso's ability to serve the future needs of its present

customers, even at higher rates, may be seriously impaired. The domestic gas supply shortage is already one of national urgency.

#### IV

Generally, this Court's decision would run counter to long-range regulatory policy. Instead of bringing Canadian gas to California, and adding to the nation's total gas supply, New Company would be forced to use domestic reserves for that purpose which would not put it "in the same relative competitive position vis-a-vis El Paso in the California market as that which Pacific Northwest enjoyed immediately prior to the illegal merger." It was always the intention of Pacific Northwest to use Canadian gas in its proposed service to California. In short, it is far sounder for New Company, like Pacific Northwest, to use the vast Canadian resources that are available to it for any project to California. This Court's decision precludes that alternative. Any additional gas reserves divested to New Company will come subject to a contractual device known in the industry as a "take or pay" provision. Under such a provision, a company must pay for the gas whether it actually uses the gas or not. Therefore, New Company could not afford to leave these reserves idle even if it determined that it would otherwise be advantageous to use Canadian reserves.

#### V

Of equal concern to Nevada is this Court's apparent ruling that New Company will not be allowed the benefit of its fair share of El Paso's low-cost debt. It is respectfully submitted that this Court could not have been aware of the consequences of this holding, which, if implemented, will mean immediate and substantial rate increases to New Company's customers.

## VI

Public policy dictates that gas transmission companies have a high debt-equity ratio, because debt is the lower-cost component of capitalization. Capital costs go into a pipeline's cost of service, which must be covered by its revenues, and thus a high debt-equity ratio means lower costs to the consumer. The debt El Paso was ordered to divest to New Company had an average weighted interest cost of 5.26%.

## VII

New debt raised in lieu of that existing debt will carry a much higher interest rate. Rough calculations show that a minimum three percent increase on New Company's \$170,000,000 debt structure will result in additional costs to the New Company of over \$5,000,000 a year. The gas consumer will be required to bear this burden. Furthermore, the imposition of this burden bears no visible relation to the end sought to be served, which is the reinstatement of competition. The effect of what this Court has done is to build into the New Company the highest debt costs of any gas transmission company in the nation. Obviously, this will limit New Company's ability to engage in price competition, both for new projects and with alternate energy supplies.

## VIII

Nevada believes that the truth of all of the arguments set forth above could be demonstrated to the Court in a hearing on the merits of this case. Nevada urges this Court not to summarily dispose of this immensely complicated case, with which the public interest is so directly bound, without a hearing on the merits. Therefore, Nevada respectfully requests this Court to grant



rehearing and give to the parties an opportunity to brief and argue this case on its merits.

Dated this 10th day of July, 1969.

Respectfully submitted,

/s/ Harvey Dickerson

HARVEY DICKERSON  
Attorney General of Nevada

*Attorney for Petitioner*

NEVADA PUBLIC SERVICE COMMISSION

### CERTIFICATE

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for purposes of delay.

/s/ Harvey Dickerson

HARVEY DICKERSON  
Attorney General of Nevada